

application directly but that Applicants are entitled to claim priority to the US provisional application no. 60/ 136,218, filed May 26, 1999.

Applicants respectfully submit that the US Patent and Trademark Office was closed on January 25, 2000, and January 26, 2000, due to inclement weather and as published in the Official Gazette Notice on February 15, 2000, each of those days was considered as a "Federal holiday within the District of Columbia" in accordance with 35 USC 21 and 37 CFR 1.6, 1.7, and 1.9. Therefore any action or fees due on those days is to be considered as timely for the purposes of 35 USC 119 if the action was taken on the next business day. Thus, since the application was filed on the next succeeding business day, January 27, 2000, Applicants are entitled to the benefit of priority based upon JP 11-17478. A copy of the OG Notice is attached for the Examiner's convenience.

## **II. Election/Restriction**

Applicants herein affirm the election of Group I, claims 1-10, and the election of the species of claim 9 (zinc salt of ascorbic acid phosphate).

## **III. Claim Rejections Under 35 U.S.C. § 102**

Claims 1-6 and 9 were rejected under 35 U.S.C. § 102(a) as being anticipated by Suzuki et al (EP8 84321). The Examiner alleges that EP '321 discloses a dermal composition comprising ascorbic acid 2-phosphate zinc salt (see example 3, page 6) and all the critical elements required by the instant claims are met by the cited reference. The Examiner further states that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

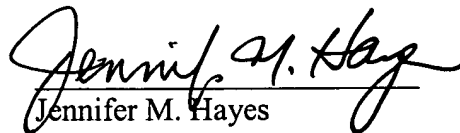
Applicants note that the reference was published on December 16, 1998, less than 12 months before Applicants' priority date of January 26, 1999. Applicants also note that three of the four named inventors of the reference are also named inventors of the present application. Therefore, Applicants submit a Declaration under 37 C.F.R. § 1.132 stating that three of the named applicants of the present application conceived or invented the subject matter in EP '321 upon which the Examiner relies and that the subject matter was derived from the applicant(s) rather than invented by another. In view thereof, Applicants respectfully request withdrawal of the rejection.

#### **IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 19-4880.

Respectfully submitted,

  
Jennifer M. Hayes  
Registration No. 40,641

SUGHRUE, MION, ZINN,  
MACPEAK & SEAS, PLLC  
2100 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037-3213  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

Date: July 2, 2001

Closing of the Patent and Trademark Office  
on Tuesday January 25, 2000, and  
Wednesday, January 26, 2000

In view of the official closing of Federal Government offices in the Washington, D.C. metropolitan area, including the Patent and Trademark Office, on Tuesday, January 25, 2000, and Wednesday, January 26, 2000, the Patent and Trademark Office will consider each of those days, a "Federal holiday within the District of Columbia" under 35 U.S.C. 21 and 37 C.F.R. 1.6, 1.7 and 1.9. Any action or fee due on those days will be considered as timely for the purposes of, e.g., 35 U.S.C. 119, 120, 133 and 151, if the action is taken, or the fee paid, on the next succeeding business day on which the Patent and Trademark Office was open, that is, Thursday, January 27, 2000.

37 C.F.R. 1.6(a)(2) and (4) provide that correspondence deposited as Express Mail in accordance with 37 C.F.R. 1.10, and trademark-related correspondence transmitted electronically, will be considered filed on the date of deposit with the United States Postal Service, or the date the PTO receives the electronic transmission, respectively. Thus, any paper or fee properly deposited as Express Mail on January 25, 2000, or January 26, 2000, in accordance with 37 C.F.R.

1.10 (that is, shown by a "date-in" of January 25, 2000, or January 26, 2000, on the Express Mail mailing label), or trademark-related correspondence transmitted electronically on either January 25, 2000, or January 26, 2000, will be considered filed on its respective date of deposit in Express Mail, or receipt of the electronic transmission.

January 27, 2000

CLARENCE C. CRAWFORD for  
Q. TODD DICKINSON

Assistant Secretary of Commerce and  
Commissioner of Patents and Trademarks



RECEIVED  
JUL 10 2001  
TECH CENTER 1600/2900